

May 15, 2007

TO: Workers' Compensation Labor Management Advisory Council

AGENDA ITEM: Regulation/Oversight of Claims Examiners – Diana Ferriter

Background: SB511 was introduced in the 2007 Legislature to require licensing and continuing education of workers' compensation claims examiners. The bill died in the Senate Business, Labor, & Economic Affairs Committee. Refer to copy of SB511. Council members requested this topic be included on the meeting agenda.

The Workers' Compensation Claims Assistance Bureau handles requests for assistance from injured workers on a daily basis. Upon receipt of a complaint or request for assistance, we contact the claims examiner handling the case for the insurance company and help the parties work out the issues involved. We find that claims examiners are very responsive to our contacts and most of the issues are worked out without the need for further action.

**ALTERNATIVES TO CLAIMS EXAMINER LICENSING AND REGULATION (SB511)
OFFERED BY THE EMPLOYMENT RELATIONS DIVISION (ERD):**

1. Require the Department to mail a Benefit Pamphlet containing our contact information to every injured worker. The current law (39-71-606) requires the Department to prepare a benefit pamphlet and requires insurers to provide the pamphlet to injured workers. This pamphlet provides a summary of benefits in the law and also provides our contact information. Injured workers often tell us they didn't receive the pamphlet. If the Department is required to mail the pamphlet rather than the insurer, the injured worker will receive the required information about benefits and also receive our contact information.
2. The Department could establish a toll free phone number in the claims assistance bureau so workers could call us for assistance at no cost to them. Currently, there is no toll free number in ERD. We could establish this number by rule pursuant to rulemaking authority in 39-71-107, MCA.
3. We could track complaints and requests for assistance from injured workers and provide periodic summaries of those complaints and requests to the insurance companies involved. This process would provide information to insurers about the performance of their claims examiners and allow them to assess if action is needed to address problems with claims examiners. We could establish this function pursuant to rulemaking authority in 39-71-107, MCA, but would welcome statutory authority for this function.

SENATE BILL NO. 511

INTRODUCED BY M. COONEY

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING WORKERS' COMPENSATION CLAIMS EXAMINERS; REQUIRING LICENSURE AND CONTINUING EDUCATION; PROVIDING THE DEPARTMENT OF LABOR AND INDUSTRY WITH RULEMAKING AUTHORITY; REQUIRING THAT CONTACT INFORMATION BE INCLUDED WITH CERTAIN WRITTEN MATERIALS; AMENDING SECTION 39-71-107, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Claims examiner licensing -- continuing education -- rulemaking. (1)

A claims examiner must be licensed and meet continuing education requirements for license renewal.

(2) (a) Unless exempt as provided under subsection (3)(c), a claims examiner shall complete an examination, file an application for licensure under this section, and pay the application fee set by the department under subsection (3).

(b) A claims examiner seeking license renewal shall file a license renewal application, list continuing education credits obtained in the preceding 2 years, and pay the application fee provided under subsection (3).

(3) The department shall:

(a) provide an examination for applicants for a claims examiner's license;

(b) provide an application form for licensure;

(c) provide a waiver form for a claims examiner who has a license determined by the department to be equivalent to a claims examiner license under this part;

(d) adopt a fee commensurate with costs for examining and licensing a claims examiner;

(e) adopt continuing education requirements for claims examiners that must be met prior to a biennial license renewal; and

(f) review and approve proposed continuing education course materials prior to their presentation to determine whether the information is current and applicable to statutes in this state.

(4) Each person providing a continuing education course, lecture, seminar, or instructional program, including a plan No. 1, 2, or 3 insurer offering educational programs, shall file annually with the department an

1 alphabetical list of the names and addresses of all individuals who have successfully completed an approved
2 continuing education activity during the preceding calendar year.

3 (5) The department may refuse to recognize as valid continuing education for the purposes of this
4 section any course, lecture, seminar, or instructional program of a person that fails to comply with subsection (4).

5 (6) The department shall adopt rules to implement this section.
6

7 **Section 2.** Section 39-71-107, MCA, is amended to read:

8 **"39-71-107. Insurers to act promptly on claims -- in-state claims examiners.** (1) Pursuant to the
9 public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service
10 to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

11 (2) All workers' compensation and occupational disease claims filed pursuant to the Workers'
12 Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as
13 examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine
14 the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the
15 claim, maintain an office located in Montana, and examine Montana claims from that office. Use of a mailbox or
16 maildrop in Montana does not constitute maintaining an office in Montana.

17 (3) An insurer shall maintain the documents related to each claim filed with the insurer under the
18 Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until
19 the claim is settled. The documents may be either original documents or duplicates of the original documents and
20 must be maintained in a manner that allows the documents to be retrieved from that office and copied at the
21 request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must
22 be made available within 48 hours of a request for the file. Electronic or optically imaged documents are
23 permitted.

24 (4) An insurer shall provide to the claimant:

25 (a) a written statement of the reasons that a claim is being denied at the time of denial;

26 (b) whenever benefits requested by a claimant are denied, a written explanation of how the claimant may
27 appeal an insurer's decision; ~~and~~

28 (c) a written explanation of the amount of wage-loss benefits being paid to the claimant, along with an
29 explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the
30 initial payment of the benefit.

(d) contact information for the department, which must be provided with the written material in subsections (4)(a) through (4)(c).

(5) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(6) The department may adopt rules to implement this section.

(7) (a) For purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full.

(b) The term does not include a claim in which there has been only a lump-sum advance of benefits."

NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 1, and the provisions of Title 39, chapter 71, part 1, apply to [section 1].

NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2007.

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